

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

PAUL J. McNALLY, as he is TRUSTEE,  
MASSACHUSETTS LABORERS' HEALTH AND  
WELFARE FUND and NEW ENGLAND LABORERS'  
TRAINING TRUST FUND; JAMES MERLONI, JR.,  
as he is TRUSTEE, MASSACHUSETTS LABORERS'  
PENSION FUND and MASSACHUSETTS LEGAL  
SERVICES FUND; MARTIN F. WALSH, as he is  
TRUSTEE, MASSACHUSETTS LABORERS'  
ANNUITY FUND,

Plaintiffs

vs.

ODF CONTRACTING CO., INC.  
Defendant

and

CITIZENS BANK,  
Trustee(s)

FILED  
IN CLERK'S OFFICE  
2003 DEC 18 P 12:27  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

C.A. No.

03 12550 NG

MAGISTRATE JUDGE *Callings*

RECEIPT # 52623  
AMOUNT \$ 150  
SUMMONS ISSUED 1  
LOCAL RULE 4.1 \_\_\_\_\_  
WAIVER FORM \_\_\_\_\_  
MCF ISSUED \_\_\_\_\_  
BY DPTY. CLK. AS  
DATE 12-19-03

COMPLAINT

NATURE OF ACTION

1. This is an action brought pursuant to §§502 and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§1132(a)(3) and (d)(1) and 1145, by employee benefit plans to enforce the obligations to make contributions to such plans due under the terms of a collective bargaining agreement and the plans.

### **JURISDICTION**

2. The Court has exclusive jurisdiction of this action pursuant to §502(a), (e) and (f) of ERISA, 29 U.S.C. §§1132(a), (e) and (f), without respect to the amount in controversy or the citizenship of the parties.

### **PARTIES**

3. Plaintiff Paul J. McNally is a Trustee of the Massachusetts Laborers' Health and Welfare Fund. The Massachusetts Laborers' Health and Welfare Fund is an "employee welfare benefit plan" within the meaning of §3(3) of ERISA, 29 U.S.C. §1002(3). The Fund is administered at 14 New England Executive Park, Burlington, Massachusetts, within this judicial district.

4. Plaintiff James Merloni, Jr. is a Trustee of the Massachusetts Laborers' Pension Fund. The Massachusetts Laborers' Pension Fund is an "employee pension benefit plan" within the meaning of §3(2) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 14 New England Executive Park, Burlington, Massachusetts, within this judicial district.

5. Plaintiff Martin F. Walsh is a Trustee of the Massachusetts Laborers' Annuity Fund. The Massachusetts Laborers' Annuity Fund is an "employee pension benefit plan" within the meaning of §3(2)(A) of ERISA, 29 U.S.C. §1002(2)(A). The Fund is administered at 14 New England Executive Park, Burlington, Massachusetts, within this judicial district.

6. Plaintiff James Merloni, Jr. is a Trustee of the Massachusetts Laborers' Legal Services Fund. The Massachusetts Laborers' Legal Services is an "employee welfare benefit plan" within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 14 New England Executive Park, Burlington, Massachusetts, within this judicial district.

7. Plaintiff Paul J. McNally is a Trustee of the New England Laborers' Training Trust Fund. The New England Laborers' Training Trust Fund is an "employee welfare benefit plan" within the meaning of §3(1) of ERISA, 29 U.S.C. §1002(1). The Fund is administered at 37 East Street, Hopkinton, Massachusetts, within this judicial district.

8. The Health and Welfare, Pension, Annuity, Legal Services and Training Funds are multi-employer plans within the meaning of §3(37) of ERISA, 29 U.S.C. §1002(37). They are hereinafter collectively referred to as "the Funds."

9. Defendant ODF Contracting Co., Inc. (hereinafter "ODF" or "the Employer") is a Massachusetts corporation with a principal place of business at 60 Girard Street, Roxbury, Massachusetts and is an employer engaged in commerce within the meaning of §3(5) and (12) of ERISA, 29 U.S.C. §1002(5) and (12).

10. Citizens Bank is a banking institution holding assets of the defendant.

#### **GENERAL ALLEGATIONS OF FACT**

11. On or about July 29, 1997, defendant ODF agreed in writing to be bound to the terms of the Restated Agreements and Declarations of Trust establishing Plaintiff Funds, to the terms of collective bargaining agreements requiring contributions to Plaintiff Funds; and to any successor agreements. A copy of ODF's signed agreement ("short form agreement") is attached hereto as Exhibit A.

12. Because of the short form agreement, ODF has been a party to successive collective bargaining agreements, including the agreement which is effective from June, 2000 through May, 2004. A copy of the relevant portions of this Agreement is attached hereto as Exhibit B.

13. The Agreement, like its predecessor agreements, requires employers to make contributions to Plaintiff Funds for each hour worked by covered employees. It specifies the amount to be contributed by an employer to each of Plaintiff Funds for each hour worked. Employers are also required to file monthly Remittance Reports, on which employers calculate the payments they owe.

**COUNT I - VIOLATION OF ERISA -  
DELINQUENT CONTRIBUTIONS**

14. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-13 supra.

15. On or about June 16, 2003, an auditor employed by Plaintiff Funds conducted an audit of ODF's books and records for the period November, 2002 through April, 2003.

16. The Funds' auditor determined that ODF owed the Funds \$78,892.18 in unpaid contributions for the period covered by the audit, together with \$65,326.82 in underpayments and interest on late paid contributions.

17. On or about June 19, 2003, a letter was sent from the Funds' auditor to ODF, notifying it of the unpaid contributions and outstanding accounts receivable.

18. On or about October 8, 2003, the Funds' auditor conducted a second audit of ODF's books and records, this time for the period May through August, 2003.

19. The Funds' auditor determined that ODF had accrued a new liability of \$146,297.55 for the new audit period and now owed \$68,169.37 in underpayments and interest on late paid contributions.

20. On or about October 17, 2003, a letter was sent from the Funds' auditor to ODF, notifying it of the new delinquency.

21. Since this audit, the Funds have collected monies owed by ODF from certain third parties, thereby reducing the audit balance to \$80,481.08. However, ODF has paid no contributions for work it has performed between September 1, 2003 and the present and owes an as yet unliquidated amount for that period.

22. To date, ODF has failed and refused to pay the Funds the \$80,481.08 in contributions still due for the period May through August, 2003 and has accrued an additional obligation for the period September, 2003 through the present.

23. The failure of ODF to make contributions on behalf of all covered employees as required by the terms of the Funds and the collective bargaining agreement violates §515 of ERISA, 29 U.S.C. §1145.

24. Absent an order from this Court, the defendant will continue to refuse to pay the monies it owes to the Funds, as determined at the audit and refuse to submit Remittance Reports and pay contributions now due and owing, and the Funds and their participants will be irreparably damaged.

25. A copy of this Complaint is being served upon the Secretary of Labor and the Secretary of the Treasury by certified mail as required by §502(h) of ERISA, 29 U.S.C. §1132(h).

**RELIEF REQUESTED**

WHEREFORE, Plaintiff Funds requests this Court to grant the following relief:

- a. Order the attachment by trustee process of the bank accounts of ODF held by Citizens Bank;
- b. Order the attachment of the machinery, inventory and accounts receivable of defendant ODF;

c. Order defendant ODF to make available to Plaintiff Funds or their duly authorized representative all of its payroll records, including, but not limited to, file copies of contribution reports, payroll tax returns, employees' earning records, weekly payroll registers, certified payrolls, cash disbursement journals and a complete listing of all job locations for the period September 1, 2003 until the date of the Court's order for the purpose of ascertaining the amounts, if any, of unpaid contributions;

d. Enter a preliminary and permanent injunction enjoining ODF from refusing or failing to make contributions to Plaintiff Funds and from refusing or failing to permit Plaintiff Funds to audit the payroll records as prayed for in the preceding paragraph;

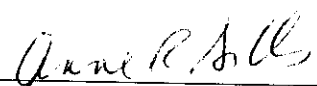
e. Enter judgment in favor of the Plaintiff Funds in the amount of \$80,481.08 plus any additional amounts determined by the Court to be owed by ODF or which may become due during the pendency of this action, together with interest on the unpaid contributions at the rate prescribed under §6621 of the Internal Revenue Code, liquidated damages in an amount equal to 20 percent of the total of unpaid contributions or the total interest owed, whichever is greater, reasonable attorneys' fees, and costs, all pursuant to 29 U.S.C. §1132(g)(2); and

f. Such further and other relief as this Court deem appropriate.

Respectfully submitted,

PAUL J. MCNALLY, as he is  
TRUSTEE, MASSACHUSETTS  
LABORERS' HEALTH AND WELFARE  
FUND, et al,

By their attorneys,

  
\_\_\_\_\_  
Anne R. Sills, Esquire  
BBO #546576

Segal, Roitman & Coleman  
11 Beacon Street  
Suite #500  
Boston, MA 02108  
(617) 742-0208

Dated: December 17, 2003

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MA LBRS BEN FDS

SEC RUT &amp; COLE

**MASSACHUSETTS LABORERS' DISTRICT COUNCIL****ACCEPTANCE OF AGREEMENT(S)  
AND DECLARATIONS OF TRUST  
Form #1**

The Undersigned Employer hereby repeats its earlier voluntary recognition of the Massachusetts Laborers' District Council as the exclusive representative of its employees under Section 9(a) of the National Labor Relations Act and incorporates by reference herein such Voluntary Recognition Agreement and also hereby approves the following Section 9(a) Agreement(s):

(1) by and between the Associated General Contractors Association of Massachusetts, Inc. and the Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc.;

(2) by and between the Labor Relations Division of the Construction Industries of Massachusetts, Inc.;

(3) by and between the General Contractors' Association of Pittsfield, Massachusetts, Inc.;

(4) by and between the Master Plasterers' Association of Boston and Vicinity;

(5) by and between the Construction Industries Association of Western Massachusetts, Inc.;

(6) by and between the Foundation and Marine Contractors' Association of New England, Inc.;

and the Massachusetts Laborers' District Council on behalf of its affiliates of the Laborers' International Union of North America, AFL-CIO, all said Agreements being effective from June 1, 1997 through May 31, 2000 and any successor agreements between the parties and herewith accepts the same and becomes one of the parties thereto and agrees to abide by all its terms and conditions. [Circle above numbered Agreement(s) pertaining to your Company and initial].

1. The life of this Agreement is to be co-extensive with the terms set out or as they shall be set out from time to time in the aforementioned Collective Bargaining Agreement(s) with the above-named Associations and shall continue in effect unless the Employer gives the Union notice of desired change or termination of a particular Collective Bargaining Agreement in keeping with the applicable notice provisions contained therein.

2. This Agreement binds the Employer to all obligations of an Employer as set forth in the above referred to Agreements and applies to all Laborers' work and geographical jurisdictions as set forth therein unless specifically limited, in writing, on this document.



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## Form #1

3. The said Agreements provide, among other conditions, contributions to the Massachusetts Statewide Laborers' Health and Welfare Fund, New England Laborers' Health & Safety Fund, Massachusetts Statewide Laborers' Pension Fund, New England Laborers' Training Fund, New England Laborers' Labor-Management Cooperation Trust Fund, Massachusetts Statewide Legal Services Fund and Massachusetts Laborers' Statewide Annuity Fund and Dues Deduction Fund and the Employer agrees to be bound by the foregoing Agreements and Declarations of Trust and hereby irrevocably designates as its representatives on the Boards of Trustees such Trustees as are named in said Agreements as Employer Trustees together with their successors selected in the manner provided within said Agreements and agree to be bound by all actions taken by said Employer Trustees pursuant to the said Agreements and Declarations of Trust and agrees that it may be sued by any of said Funds, or the Trustees thereof, or the Union, for non-payment of contributions or non-performance of its obligations thereunder.

4. The said Agreements further require contributions to the Construction Industries of Massachusetts Advancement Fund, the Western Massachusetts Industry Advancement Fund and the Massachusetts Construction Advancement Program, as applicable, for their Association Industry Programs and payment to the Massachusetts Laborers' District Council of Union Dues deducted from net pay in accordance with the voluntary written authorization of employees. The Employer agrees that it may be used by said Associations or by the District Council, as appropriate, for non-compliance with or non-performance of said obligations.

5. Inasmuch as the Union has submitted proof and the Employer is satisfied that the Union represents a majority of its employees in the bargaining unit described herein, the Employer recognizes the Union as the exclusive Collective Bargaining Agent for all employees within that bargaining unit, on all present and future jobsites within the jurisdiction of the Union, unless and until such time as the Union loses its status as the employees' exclusive representative as a result of an NLRB election requested by the employees. The Employer agrees that it will not request an NLRB election and expressly waives any right it may have to do so.

6. This instrument shall be binding upon the Employer named herein, and its' successors and assigns, and no provisions contained or incorporated herein shall be nullified or affected in any manner as a result of any consolidations, sale, transfer, assignment, joint venture or any combination or other disposition of the undersigned Employer.

7. Attached hereto shall be the Contractor Questionnaire fully executed by the undersigned Employer and approved by the Massachusetts Laborers' District Council or an official agent thereof.

Form #1

Date July 29, 1997

Union Witness to Employer's Signature:



District Council Official  
7 Laborers' Way  
Hopkinton, MA 01748

508-435-4164  
617-969-4018  
Fax: 508-435-7982

Employer:

ODF Contracting Co., Inc.

Company Name (please print)

Oliver D. Fernandez, Jr.

Name & Title of Authorized Representative  
(Please print or type)

  
Signature of Authorized Representative

Place of Business Address:

Mailing Address, if different

\_\_\_\_\_  
\_\_\_\_\_

Telephone No. (508) 741-2700

Fax No.

Please forward one (1) executed copy to the Massachusetts Laborers' District Council

BUILDING AND SITE CONSTRUCTION AGREEMENT

between

MASSACHUSETTS LABORERS' DISTRICT COUNCIL

of the

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA  
AFL-CIO

and

THE LABOR RELATIONS DIVISION OF THE  
ASSOCIATED GENERAL CONTRACTORS OF MASSACHUSETTS, INC.

and

BUILDING TRADES EMPLOYERS' ASSOCIATION OF  
BOSTON AND EASTERN MASSACHUSETTS, INC.



EFFECTIVE:  
JUNE 1, 2000 - MAY 31, 2004

to work each day of the seven (7) (or more) day schedule.

(b) If Salamander heating units referred to above are to operate for more than two (2) full days but less than seven (7) full days, then four (4) six-hour (6 hour) shifts shall be established and employees so assigned shall be paid eight (8) hours pay for the six (6) hours worked on the shift.

## **ARTICLE XI**

### **MASSACHUSETTS LABORERS' HEALTH and WELFARE FUND**

**Section 1.** Each Employer subscribes to and agrees to be bound by the Massachusetts Laborers' Health & Welfare Fund Agreement and Declaration of Trust and any amendments thereto and ratifies and approves all actions of the Trustees within the scope of said Agreement.

**Section 2. Contributions to Fund** Each Employer agrees to pay the sum reflected in Appendix A of this Agreement, per hour for each hour worked by each employee, covered by the terms of this Agreement, to the Massachusetts Laborers' Health and Welfare Fund. Said sum will be paid into said Fund not later than the twentieth (20th) day of each and every month for hours worked by said employees up to the end of the last complete payroll of the preceding calendar month. The said Fund will be administered by a Board of Trustees selected and appointed under the provisions of the Trust Agreement executed by the Union and the Employers. Said Trust Agreement shall conform to the Labor-Management Relations Act of 1947, as amended, and all other applicable laws and regulations of the United States, the Commonwealth of Massachusetts and the State of New Hampshire. The said Fund will be used to purchase accident and sickness disability insurance and hospitalization, medical and surgical benefits and/or other welfare benefits of a similar nature for the said employees as provided in the said Trust Agreement.

The Union reserves the right to remove the employees whose wages, hours and working conditions as set forth in this Agreement from any job for which the Employer has failed to remit to the aforementioned Health and Welfare Fund monies due to the Fund within the time for payment thereof, as determined by the Board of Trustees acting under the authority of the Agreement and Declaration of Trust under which the Fund operates.

The failure to contribute by the Employer to the said Health and Welfare Fund, as provided herein, for the purpose of the remedy the Union may pursue, is covered in Article XX herein. The Massachusetts Laborers' Health and Welfare Fund shall meet the requirements of all Federal and State Laws regarding the same, including the Internal Revenue Service.

**Section 3. New Federal Health Insurance Law** In the event that a new federal health insurance law becomes effective during the term of this Agreement, the parties agree to meet and reopen the contract to make any changes necessitated by the law and to negotiate other provisions as may be appropriate. In the event the parties are unable to agree upon the changes required by law or other appropriate changes, the matter may proceed to final and binding arbitration pursuant to Article XXVI at the request of either party; provided that the Arbitrator shall not be permitted to increase the cost to the Employer.

## **ARTICLE XII**

### **NEW ENGLAND LABORERS' HEALTH and SAFETY FUND**

**Section 1.** Each Employer subscribes to and agrees to be bound by the Massachusetts Laborers' Health & Safety Fund Agreement and Declaration of Trust and any amendments thereto and ratifies and approves all actions of the Trustees within the scope of said Agreement.

**Section 2.** Each Employer agrees to pay the sum reflected in Appendix A of this Agreement, per hour for each hour worked by each employee covered by the terms of this Agreement to the New England Laborers' Health and Safety Fund.

**Section 3.** Said sum shall be paid into the Fund no later than the twentieth (20th) day of each and every month for hours worked by said employees up to the end of the last complete payroll period of the preceding calendar month. The Fund will be administered by a Board of Trustees selected under and subject to the provisions of a Trust Agreement and Plan entered into by the Union and the Employers.

**Section 4.** The Plan and Trust shall conform to the Labor-Management Relations Act of 1947, as amended, and all other applicable laws and regulations of the United States and states where this Agreement applies. The Trust and Plan

at all times shall be a "qualified" Trust and Plan as defined by Sec. 401 of the Internal Revenue Code. The Plan and Trust shall be created and administered, subject to modification, change of methods or administration and practices as may be required to the end that at all times contributions by the Employers to the Fund shall be deductible as an ordinary expense of doing business in the computation of Federal Income Tax of the Employers

**Section 5.** The failure to contribute by the Employer to the said Health and Safety Fund, as provided herein, for the purpose of remedy the Union may pursue, as covered in Article XX herein. The New England Laborers' Health and Safety Fund shall meet the requirements of all Federal and State Laws regarding the same, including the Internal Revenue Service.

### **ARTICLE XIII** **MASSACHUSETTS LABORERS' PENSION FUND**

Each Employer subscribes to and agrees to be bound by the Massachusetts Laborers' Pension Fund Agreement and Declaration of Trust and any amendments thereto and ratifies and approves all actions of the Trustees within the scope of said Agreement.

Each Employer agrees to pay the sum reflected in Appendix A of this Agreement, per hour for each hour worked by each employee, covered by the terms of this Agreement to the Massachusetts Laborers' Pension Fund. Said sum will be paid into said Fund not later than the twentieth (20th) day of each and every month for hours worked by said employees up to the end of the last complete payroll period of the preceding calendar month. The Fund will be administered by a Board of Trustees selected under, and subject to the provisions of a Trust Agreement and Plan entered into by the Union and the Employers. The Plan and the Trust shall conform to the Labor-Management Relations Act of 1947, as amended, and all other applicable laws and regulations of the United States, the Commonwealth of Massachusetts and the State of New Hampshire.

The Trust and Plan at all times shall be a "qualified" Trust and Plan, as defined by Section 401 of the Internal Revenue Code. The Plan and the Trust shall be created and administered, subject to modification, change of methods of administration and practices as may be required, to the end that at all times contributions by the Employers to the Fund shall be deductible as an ordinary



expense of doing business in the computation of Federal Income Tax of the Employers.

The failure to contribute by the Employer to the said Pension Fund, as provided herein, for the purpose of the remedy the Union may pursue is covered in Article XX herein. The Massachusetts Laborers' Pension Fund shall meet the requirements of all Federal and State Laws regarding the same, including the Internal Revenue Service.

#### **ARTICLE XIV** **NEW ENGLAND LABORERS' TRAINING TRUST FUND**

Each Employer subscribes to and agrees to be bound by the Massachusetts Laborers' Training Trust Fund Agreement and Declaration of Trust and any amendments thereto and ratifies and approves all actions of the Trustees within the scope of said Agreement.

Each Employer agrees to pay the sum reflected in Appendix A of this Agreement, per hour for each hour worked by each employee covered by the terms of this Agreement, to a Training Fund known as New England Laborers' Training Trust Fund. Said sum will be paid into said Fund not later than the twentieth (20th) day of each and every month for hours worked by said employees up to the end of the last complete payroll period of the preceding calendar month. The Fund will be administered by a Board of Trustees selected under, and subject to the provisions of a Trust Agreement and Plan entered into by the Union and the Employers. The Plan and Trust shall conform to the Labor-Management Relations Act of 1947, as amended, and all other applicable laws and regulations of the United States and the Commonwealth of Massachusetts and the State of New Hampshire. The Trust and Plan at all times shall be a "qualified" Trust and Plan as defined by Section 401 of the Internal Revenue Code. The Plan and Trust shall be created and administered, subject to modification, change of methods or administration and practices as may be required to the end that at all times contributions by the Employers to the Fund shall be deductible as an ordinary expense of doing business in the computation of Federal Income Tax of the Employers.

The failure to contribute by the Employer to the said Training Fund as provided herein, for the purpose of the remedy the Union may pursue, is covered in Article XX, herein. The New England Laborers' Training Trust Fund shall

meet the requirements of all Federal and State Laws regarding the same, including the Internal Revenue Service.

**ARTICLE XV**  
**MASSACHUSETTS LABORERS' LEGAL SERVICES FUND**

*Section 1.* Each Employer subscribes to and agrees to be bound by the Massachusetts Laborers' Legal Services Fund Agreement and Declaration of Trust and any amendments thereto and ratifies and approves all actions of the Trustees within the scope of said Agreement.

*Section 2.* Each Employer agrees to pay the sum reflected in Appendix A of this Agreement, per hour for each hour worked by each employee, covered by this Agreement to the Massachusetts Laborers' Legal Services Fund. Said contributions will be paid into such Fund not later than the twentieth (20th) day of each and every month for the hours worked by said employees up to the end of the last completed payroll period of the preceding calendar month. The failure to contribute to this Fund by the Employer as provided herein shall be subject to the provisions of Article XX hereof. The Massachusetts Laborers' Legal Services Fund shall meet the requirements of all Federal and State Laws regarding the same, including the Internal Revenue Service.

**ARTICLE XVI**  
**MASSACHUSETTS LABORERS' ANNUITY FUND**

*Section 1.* Each Employer subscribes to and agrees to be bound by the Massachusetts Laborers' Annuity Fund Agreement and Declaration of Trust and any amendments thereto and ratifies and approves all actions of the Trustees within the scope of said Trust Agreement.

*Section 2.* Each Employer agrees to pay for each hour worked by each employee, covered by this Agreement, to the Massachusetts Laborers' Annuity Fund, the negotiated contribution in each respective zone and any future allocated increase during the term of this agreement (reflected in Appendix A of this Agreement). Said sums will be paid into said Fund not later than the twentieth (20th) day of each and every month for hours worked by said employees up to the end of the last complete payroll of the preceding calendar month. Payment shall be made in one check and on the same form furnished by the Massachusetts Laborers' Benefit Funds. The said Fund will be administered by a Board of



Trustees selected and appointed under the provisions of the Trust Agreement executed by the Union and the Employers. Said Trust Agreement shall conform to the Labor-Management Relations Act of 1947, as amended, and all other applicable laws and regulations of the United States, the Commonwealth of Massachusetts and the State of New Hampshire.

**Section 3.** Members of the Association and Employers subscribing to the Trust Agreement, when working outside the jurisdictional area of this Agreement in areas where they have no contractual obligation to contribute to an annuity fund, shall contribute the same amount in the same manner as set forth above to the "Massachusetts Laborers' Annuity Fund" for each Laborer when said Laborer is sent and put to work by the Employer from the territorial jurisdiction set forth in Article I.

**Section 4.** Failure to contribute to the Fund shall be a violation of this Agreement. The Union and the Employer mutually recognize the requirement that contributions to this Fund be made on a current basis by all Employers who have made one or more contributions to the Fund or have entered into an agreement with the Union requiring such contributions.

**Section 5.** If an audit by the Trustees or their representatives determines that an Employer has not correctly reported the hours worked by his Laborers, the Employer, in addition to other remedies provided in the Trust Agreement, shall be liable to the Fund for the cost of auditing his payroll records and for interest at the rate of ten percent (10%) per annum from the date when payment was due to the date when payment was made.

**Section 6.** The Fund shall be used to provide benefits as determined by the Trustees in accordance with the terms of the Trust. The failure to contribute by the Employer to the said Annuity Fund, as provided herein, for the purpose of the remedy the Union may pursue, is covered in Article XX herein. The Massachusetts Laborers' Annuity Fund shall meet the requirements of all Federal and State Laws regarding the same, including the Internal Revenue Service.

**ARTICLE XVII**  
**NEW ENGLAND LABORERS' LABOR-MANAGEMENT COOPERATION**  
**TRUST**

*Section 1.* Each Employer subscribes to and agrees to be bound by the New England Laborers' Labor-Management Cooperation Trust Agreement and

**ARTICLE XVIII**  
**MASSACHUSETTS CONSTRUCTION ADVANCEMENT PROGRAM**

**Section 1.** Each Employer subscribes to and agrees to be bound by the Massachusetts Construction Advancement Program Agreement and Declaration of Trust and any amendments thereto and ratifies and approves all actions of the Trustees within the scope of said Agreement.

**Section 2.** This Trust, known as the Massachusetts Construction Advancement Program, shall be referred to in this Article as "the Fund". The Fund shall be administered solely and exclusively by Trustees appointed pursuant to the provisions of the Trust instrument.

**Section 3.** Each Employer agrees to pay the sum reflected in Appendix A of this Agreement, per hour for each hour worked by each of its employees, covered by this Agreement, to the Massachusetts Construction Advancement Program.

**Section 4.** The Fund will be used by its Trustees for the following express purposes: A. Manpower Recruitment and Training; B. Education; C. Safety and Accident Prevention; D. Public Relations; E. Equal Employment; F. Intra-Industry Relations; G. Market Development; H. Market Research; and I. Information Services within the construction industry for the mutual benefit of Employers and their employees.

**Section 5.** The Fund shall not be used for any of the following expressly prohibited purposes: A. Lobbying in support of anti-Union legislation; B. Supporting litigation before a court or any administrative body against the Union or any of its agents; and C. Subsidizing contractors during a period or periods of work stoppages or strikes.

**Section 6.** As a part of the administration of the Fund, there shall be an annual audit of the Fund by an independent certified public accountant. A copy of the audit shall be made available to all parties signatory hereto.

**Section 7.** In the event that the Union has reasonable cause to believe that the Fund is being used for any of the purposes prohibited by Section 5, the dispute shall be subject to the arbitration provisions of this Agreement.

**APPENDIX A**  
**WAGE RATES AND CLASSIFICATIONS**

***Section 1. Zone 1 and Zone 2 - Wage Rates and Benefit Allocations***

***ZONE 1*** Suffolk County, the City of Cambridge, and those projects that are outside the geographic limit of Suffolk county but for which the work is primarily part of projects located in Suffolk County that are covered by project agreements.

***SUFFOLK COUNTY*** (Boston, Chelsea, Revere, Winthrop, Deer & Nut Islands)

***MIDDLESEX COUNTY*** (Arlington, Belmont, Burlington, Cambridge, Everett, Malden, Medford, Melrose, Reading, Somerville, Stoneham, Wakefield, Winchester, Winthrop and Woburn only)

***NORFOLK COUNTY*** (Brookline, Dedham and Milton only)

***ZONE 2*** The remaining geographical area covered by the Eastern Massachusetts Laborers Agreement

***BARNSTABLE, BRISTOL, DUKES, ESSEX, NANTUCKET, PLYMOUTH and WORCESTER COUNTIES***

***MIDDLESEX COUNTY*** (With the exception of Arlington, Belmont, Burlington, Cambridge, Everett, Malden, Melrose, Reading, Somerville, Stoneham, Wakefield, Winchester, Winthrop and Woburn)

***NORFOLK COUNTY*** (With the exception of Brookline, Dedham and Milton only)

***FRANKLIN COUNTY*** (Warwick, and Orange only)

The town of Salem in Rockingham County, New Hampshire.

**ZONE 1** *SUFFOLK COUNTY* (Boston, Chelsea, Revere, Winthrop, Deer & Nut Islands)

*MIDDLESEX COUNTY* (Arlington, Belmont, Burlington, Cambridge, Everett, Malden, Medford, Melrose, Reading, Somerville, Stoneham, Wakefield, Winchester, Winthrop and Woburn only)

*NORFOLK COUNTY* (Brookline, Dedham and Milton only)

|                        | 6/1/00        | 12/1/00       | 6/1/01        | 12/1/01       | 6/1/02        | 12/1/02       | 6/1/03        | 12/1/03       |
|------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| <b>*INCREASE</b>       | <b>0.50</b>   | <b>0.55</b>   | <b>0.55</b>   | <b>0.55</b>   | <b>0.60</b>   | <b>0.65</b>   | <b>0.85</b>   | <b>0.85</b>   |
| Wages                  | 21.50         | 22.05         | 22.60         | 23.15         | 23.75         | 24.40         | 25.25         | 26.10         |
| H & W                  | 2.50          | 2.50          | 2.50          | 2.50          | 2.50          | 2.50          | 2.50          | 2.50          |
| Pension                | 2.35          | 2.35          | 2.35          | 2.35          | 2.35          | 2.35          | 2.35          | 2.35          |
| Annuity                | 3.15          | 3.15          | 3.15          | 3.15          | 3.15          | 3.15          | 3.15          | 3.15          |
| Nell-MCT               | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          |
| Unified Trust          | 0.50          | 0.50          | 0.50          | 0.50          | 0.50          | 0.50          | 0.50          | 0.50          |
| Training               | 0.30          | 0.30          | 0.30          | 0.30          | 0.30          | 0.30          | 0.30          | 0.30          |
| Legal                  | 0.10          | 0.10          | 0.10          | 0.10          | 0.10          | 0.10          | 0.10          | 0.10          |
| H & Safety             | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          |
| MCAP/CIM               | 0.05          | 0.05          | 0.05          | 0.05          | 0.05          | 0.05          | 0.05          | 0.05          |
| Total                  | 30.75         | 31.30         | 31.85         | 32.40         | 33.00         | 33.65         | 34.50         | 35.35         |
| <b>*Dues &amp; LPL</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> |

*Dues and LPL are deducted from wages*

**ZONE 2** *BARNSTABLE, BRISTOL, DUKES, ESSEX, NANTUCKET,  
PLYMOUTH and WORCESTER COUNTIES*

*MIDDLESEX COUNTY* (With the exception of Arlington, Belmont, Burlington, Cambridge, Everett, Malden, Melrose, Reading, Somerville, Stoneham, Wakefield, Winchester, Winthrop and Woburn)

*NORFOLK COUNTY* (With the exception of Brookline, Dedham and Milton only)

*FRANKLIN COUNTY* (Warwick, and Orange only)

The Town of Salem in Rockingham County, New Hampshire

|                  | 6/1/00      | 12/1/00     | 6/1/01      | 12/1/01     | 6/1/02      | 12/1/02     | 6/1/03      | 12/1/03     |
|------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>*INCREASE</b> | <b>0.45</b> | <b>0.45</b> | <b>0.45</b> | <b>0.45</b> | <b>0.55</b> | <b>0.55</b> | <b>0.65</b> | <b>0.65</b> |
| Wages            | 19.90       | 20.35       | 20.80       | 21.25       | 21.80       | 22.35       | 23.00       | 23.65       |
| H & W            | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        |
| Pension          | 2.35        | 2.35        | 2.35        | 2.35        | 2.35        | 2.35        | 2.35        | 2.35        |
| Annuity          | 2.25        | 2.25        | 2.25        | 2.25        | 2.25        | 2.25        | 2.25        | 2.25        |
| Nell-MCT         | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        |
| Unified Trust    | 0.50        | 0.50        | 0.50        | 0.50        | 0.50        | 0.50        | 0.50        | 0.50        |
| Training         | 0.30        | 0.30        | 0.30        | 0.30        | 0.30        | 0.30        | 0.30        | 0.30        |
| Legal            | 0.10        | 0.10        | 0.10        | 0.10        | 0.10        | 0.10        | 0.10        | 0.10        |
| H & Safety       | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        |
| MCAP/CIM         | 0.05        | 0.05        | 0.05        | 0.05        | 0.05        | 0.05        | 0.05        | 0.05        |
| Total            | 28.25       | 28.70       | 29.15       | 29.60       | 30.15       | 30.70       | 31.35       | 32.00       |
| *Dues & LPL      | (-.70)      | (-.70)      | (-.70)      | (-.70)      | (-.70)      | (-.70)      | (-.70)      | (-.70)      |

*Dues and LPL are deducted from wages*

\*THE COUNCIL RESERVES THE RIGHT TO ALLOCATE THESE INCREASES IN ITS DISCRETION AMONG WAGES, FRINGE BENEFITS AND DUES DEDUCTION.

**ZONE 1**     *SUFFOLK COUNTY* (Boston, Chelsea, Revere, Winthrop, Deer & Nut Islands)

*MIDDLESEX COUNTY* (Arlington, Belmont, Burlington, Cambridge, Everett, Malden, Medford, Melrose, Reading, Somerville, Stoneham, Wakefield, Winchester, Winthrop and Woburn only)

*NORFOLK COUNTY* (Brookline, Dedham and Milton only)

|                        | 6/1/00        | 12/1/00       | 6/1/01        | 12/1/01       | 6/1/02        | 12/1/02       | 6/1/03        | 12/1/03       |
|------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| <b>*INCREASE</b>       | <b>0.50</b>   | <b>0.55</b>   | <b>0.55</b>   | <b>0.55</b>   | <b>0.60</b>   | <b>0.65</b>   | <b>0.85</b>   | <b>0.85</b>   |
| Wages                  | 21.50         | 22.05         | 22.60         | 23.15         | 23.75         | 24.40         | 25.25         | 26.10         |
| H & W                  | 2.50          | 2.50          | 2.50          | 2.50          | 2.50          | 2.50          | 2.50          | 2.50          |
| Pension                | 2.35          | 2.35          | 2.35          | 2.35          | 2.35          | 2.35          | 2.35          | 2.35          |
| Annuity                | 3.15          | 3.15          | 3.15          | 3.15          | 3.15          | 3.15          | 3.15          | 3.15          |
| Nell-MCT               | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          |
| Unified Trust          | 0.50          | 0.50          | 0.50          | 0.50          | 0.50          | 0.50          | 0.50          | 0.50          |
| Training               | 0.30          | 0.30          | 0.30          | 0.30          | 0.30          | 0.30          | 0.30          | 0.30          |
| Legal                  | 0.10          | 0.10          | 0.10          | 0.10          | 0.10          | 0.10          | 0.10          | 0.10          |
| H & Safety             | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          | 0.15          |
| MCAP/CIM               | 0.05          | 0.05          | 0.05          | 0.05          | 0.05          | 0.05          | 0.05          | 0.05          |
| <b>Total</b>           | <b>30.75</b>  | <b>31.30</b>  | <b>31.85</b>  | <b>32.40</b>  | <b>33.00</b>  | <b>33.65</b>  | <b>34.50</b>  | <b>35.35</b>  |
| <b>*Dues &amp; LPL</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> | <b>(-.70)</b> |

*Dues and LPL are deducted from wages*

**ZONE 2**     *BARNSTABLE, BRISTOL, DUKES, ESSEX, NANTUCKET,  
PLYMOUTH and WORCESTER COUNTIES*

*MIDDLESEX COUNTY* (With the exception of Arlington, Belmont, Burlington, Cambridge, Everett, Malden, Melrose, Reading, Somerville, Stoneham, Wakefield, Winchester, Winthrop and Woburn)

*NORFOLK COUNTY* (With the exception of Brookline, Dedham and Milton only)

*FRANKLIN COUNTY* (Warwick, and Orange only)

The Town of Salem in Rockingham County, New Hampshire

|                  | 6/1/00      | 12/1/00     | 6/1/01      | 12/1/01     | 6/1/02      | 12/1/02     | 6/1/03      | 12/1/03     |
|------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>*INCREASE</b> | <b>0.45</b> | <b>0.45</b> | <b>0.45</b> | <b>0.45</b> | <b>0.55</b> | <b>0.55</b> | <b>0.65</b> | <b>0.65</b> |
| Wages            | 19.90       | 20.35       | 20.80       | 21.25       | 21.80       | 22.35       | 23.00       | 23.65       |
| H & W            | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        | 2.50        |
| Pension          | 2.35        | 2.35        | 2.35        | 2.35        | 2.35        | 2.35        | 2.35        | 2.35        |
| Annuity          | 2.25        | 2.25        | 2.25        | 2.25        | 2.25        | 2.25        | 2.25        | 2.25        |
| Nell-MCT         | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        |
| Unified Trust    | 0.50        | 0.50        | 0.50        | 0.50        | 0.50        | 0.50        | 0.50        | 0.50        |
| Training         | 0.30        | 0.30        | 0.30        | 0.30        | 0.30        | 0.30        | 0.30        | 0.30        |
| Legal            | 0.10        | 0.10        | 0.10        | 0.10        | 0.10        | 0.10        | 0.10        | 0.10        |
| H & Safety       | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        | 0.15        |
| MCAP/CIM         | 0.05        | 0.05        | 0.05        | 0.05        | 0.05        | 0.05        | 0.05        | 0.05        |
| Total            | 28.25       | 28.70       | 29.15       | 29.60       | 30.15       | 30.70       | 31.35       | 32.00       |
| *Dues & LPL      | (-.70)      | (-.70)      | (-.70)      | (-.70)      | (-.70)      | (-.70)      | (-.70)      | (-.70)      |

*Dues and LPL are deducted from wages*

**\*THE COUNCIL RESERVES THE RIGHT TO ALLOCATE THESE INCREASES IN ITS DISCRETION AMONG WAGES, FRINGE BENEFITS AND DUES DEDUCTION.**



| MASS LABORERS CONTRIBUTION RATES |         |        |         |         |         |        |          |        |        |         |        |         |         | ZONE 1 |  | ZONE 2 |  |  |  |
|----------------------------------|---------|--------|---------|---------|---------|--------|----------|--------|--------|---------|--------|---------|---------|--------|--|--------|--|--|--|
| YEAR                             | WAGES   | H&W    | PENSION | ANNUITY | NMCT/UT | UT     | TRAINING | LEGAL  | H & S  | MCAP/CM | DUES   | FRINGES | TOT PKG |        |  |        |  |  |  |
| 1995/ JUN 01                     | \$18.95 | \$3.00 | \$2.15  | \$1.50  | \$0.15  |        | \$0.25   | \$0.10 | \$0.05 | \$0.05  | \$0.55 | \$7.80  | \$26.75 |        |  |        |  |  |  |
| Dec-01                           | \$18.10 | \$3.00 | \$2.35  | \$1.50  | \$0.15  |        | \$0.25   | \$0.10 | \$0.05 | \$0.05  | \$0.55 | \$8.00  | \$27.10 |        |  |        |  |  |  |
| 1996/ JUN 01                     | \$19.45 | \$3.00 | \$2.35  | \$1.50  | \$0.15  |        | \$0.25   | \$0.10 | \$0.05 | \$0.05  | \$0.60 | \$8.05  | \$27.50 |        |  |        |  |  |  |
| Dec-01                           | \$19.80 | \$3.00 | \$2.35  | \$1.50  | \$0.15  |        | \$0.25   | \$0.10 | \$0.05 | \$0.05  | \$0.60 | \$8.05  | \$27.85 |        |  |        |  |  |  |
| 1997/ JUN 01                     | \$19.80 | \$2.50 | \$2.35  | \$2.00  | \$0.65  |        | \$0.25   | \$0.10 | \$0.05 | \$0.05  | \$0.60 | \$8.55  | \$28.35 |        |  |        |  |  |  |
| Sep-01                           | \$19.80 | \$2.50 | \$2.35  | \$2.00  | \$0.65  |        | \$0.25   | \$0.10 | \$0.10 | \$0.05  | \$0.70 | \$8.70  | \$28.60 |        |  |        |  |  |  |
| Dec-01                           | \$20.25 | \$2.50 | \$2.35  | \$2.00  | \$0.65  |        | \$0.25   | \$0.10 | \$0.10 | \$0.05  | \$0.70 | \$8.70  | \$28.95 |        |  |        |  |  |  |
| 1998 Z1/JUN1                     | \$20.75 | \$2.50 | \$2.35  | \$2.00  | \$0.15  | \$0.50 | \$0.25   | \$0.10 | \$0.10 | \$0.05  | \$0.70 | \$8.70  | \$29.45 |        |  |        |  |  |  |
| Z1/DEC1                          | \$20.25 | \$2.50 | \$2.35  | \$2.75  | \$0.15  | \$0.50 | \$0.25   | \$0.10 | \$0.10 | \$0.05  | \$0.70 | \$9.45  | \$28.70 |        |  |        |  |  |  |
| Z2/DEC1                          | \$19.05 | \$2.50 | \$2.35  | \$2.00  | \$0.15  | \$0.50 | \$0.25   | \$0.10 | \$0.10 | \$0.05  | \$0.70 | \$8.70  | \$27.75 |        |  |        |  |  |  |
| 1998 Z1/JUN1                     | \$20.75 | \$2.50 | \$2.35  | \$2.75  | \$0.15  | \$0.50 | \$0.25   | \$0.10 | \$0.10 | \$0.05  | \$0.70 | \$9.45  | \$30.20 |        |  |        |  |  |  |
| Z1/DEC1                          | \$21.50 | \$2.50 | \$2.35  | \$2.75  | \$0.15  | \$0.50 | \$0.25   | \$0.10 | \$0.10 | \$0.05  | \$0.70 | \$9.45  | \$30.95 |        |  |        |  |  |  |
| Z2/JUN1                          | \$19.05 | \$2.50 | \$2.35  | \$2.25  | \$0.15  | \$0.50 | \$0.25   | \$0.10 | \$0.10 | \$0.05  | \$0.70 | \$8.95  | \$28.00 |        |  |        |  |  |  |
| Z2/DEC1                          | \$19.55 | \$2.50 | \$2.35  | \$2.25  | \$0.15  | \$0.50 | \$0.25   | \$0.10 | \$0.10 | \$0.05  | \$0.70 | \$8.95  | \$28.50 |        |  |        |  |  |  |
| 2000 Z1/JUN1                     | \$21.50 | \$2.50 | \$2.35  | \$3.15  | \$0.15  | \$0.50 | \$0.30   | \$0.10 | \$0.15 | \$0.05  | \$0.70 | \$9.85  | \$31.45 |        |  |        |  |  |  |
| Z1/DEC1                          | \$21.50 | \$2.50 | \$2.35  | \$3.70  | \$0.15  | \$0.50 | \$0.30   | \$0.10 | \$0.15 | \$0.05  | \$0.70 | \$10.50 | \$32.00 |        |  |        |  |  |  |
| Z2/JUN1                          | \$19.80 | \$2.50 | \$2.35  | \$2.25  | \$0.15  | \$0.50 | \$0.30   | \$0.10 | \$0.15 | \$0.05  | \$0.70 | \$9.05  | \$28.95 |        |  |        |  |  |  |
| Z2/DEC1                          | \$20.10 | \$2.50 | \$2.35  | \$2.50  | \$0.15  | \$0.50 | \$0.30   | \$0.10 | \$0.15 | \$0.05  | \$0.70 | \$9.30  | \$29.40 |        |  |        |  |  |  |
| 2001 Z1/JUN1                     | \$21.75 | \$2.80 | \$2.35  | \$3.70  | \$0.15  | \$0.50 | \$0.30   | \$0.10 | \$0.15 | \$0.05  | \$0.70 | \$10.80 | \$32.55 |        |  |        |  |  |  |
| Z1/DEC1                          | \$22.30 | \$2.80 | \$2.35  | \$3.70  | \$0.15  | \$0.50 | \$0.30   | \$0.10 | \$0.15 | \$0.05  | \$0.70 | \$10.80 | \$33.10 |        |  |        |  |  |  |
| Z2/JUN1                          | \$20.25 | \$2.80 | \$2.35  | \$2.50  | \$0.15  | \$0.50 | \$0.30   | \$0.10 | \$0.15 | \$0.05  | \$0.70 | \$9.60  | \$29.85 |        |  |        |  |  |  |
| Z2/DEC1                          | \$20.70 | \$2.80 | \$2.35  | \$2.50  | \$0.15  | \$0.50 | \$0.30   | \$0.10 | \$0.15 | \$0.05  | \$0.70 | \$9.60  | \$30.30 |        |  |        |  |  |  |
| 2002 Z1/JUN1                     | \$22.50 | \$3.15 | \$2.35  | \$3.70  | \$0.15  | \$0.50 | \$0.35   | \$0.10 | \$0.15 | \$0.05  | \$0.70 | \$11.20 | \$33.70 |        |  |        |  |  |  |
| Z1/DEC1                          |         |        |         |         |         |        |          |        |        |         |        | \$0.00  | \$0.00  |        |  |        |  |  |  |
| Z2/JUN1                          | \$20.85 | \$3.15 | \$2.35  | \$2.50  | \$0.15  | \$0.50 | \$0.35   | \$0.10 | \$0.15 | \$0.05  | \$0.70 | \$10.00 | \$30.85 |        |  |        |  |  |  |
| Z2/DEC1                          |         |        |         |         |         |        |          |        |        |         |        | \$0.00  | \$0.00  |        |  |        |  |  |  |